REMARKS

The Office Action of February 28, 2001 presents the examination of claims 1-20. Claims 3, 8 and 15 are canceled herein; their limitations being added to claims 1, 6 and 13, respectively. Claims 19 and 20 are also canceled, being replaced by new claims 21-32 which more distinctly claim the subject matter of the invention.

Objections to the claims and rejections under 35 U.S.C. § 112, second paragraph

Claims 1, 2, 4, 6, 7, 9, 11-14, 16 and 18 are objected to for the recitation "in the Sequence Listing." This phrase has been deleted, thus overcoming this objection.

Claims 1-20 stand rejected under 35 U.S.C. § 112, second paragraph for being indefinite and not distinctly claiming the invention. While not completely agreeing with the Examiner that the term "having" or "has" is indefinite, Applicants have adopted the Examiner's suggestion and replaced these terms by "comprising". The phrase "which contains nucleotides of not more than 120" has been amended as suggested by the Examiner. Claims 19 and 20 have

been canceled and replaced by claims 21-32. Applicants believe this amendment obviates the rejection of claim 19 and 20.

Prior art rejections

Claims 1, 2, 4, 6-9, 13-16 and 20 stand rejected under 35 U.S.C. § 102(a) as anticipated by Morioka et al. Claims 1, 2, 4, 6-9, 13-16, 19 and 20 stand rejected under 35 U.S.C. § 103(a)as being unpatentable over Morioka et al. in view of Ueki et al., Plant Cell Physiology or EP '770. Applicants note that claims 3, 10-12, 17 and 18 are deemed free of the prior art. Applicants suppose that claims 8 and 15 should also have been deemed free of the prior art, as these claims recite the same limitation as claim 3.

The independent claims 1, 6 and 13 have been amended to include the limitation of prior claim 3. Accordingly, the rejections of the claims over the prior art are overcome.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact the undersigned at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

Applicants believe the present claims are in condition for allowance and respectfully request such favorable action.

Attached hereto is a marked-up version of the changes made to the application by this Amendment.

Pursuant to 37 C.F.R. §§ 1.17 and 1.136(a), Applicant(s) respectfully petition(s) for a one (1) month extension of time for filing a reply in connection with the present application, and the required fee of $$110.00 is attached hereto.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

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Attachment: Version with Markings to Show Changes Made

VERSION WITH MARKINGS TO SHOW CHANGES MADE

In the Claims:

The claims have been amended as follows:

1. (Amended) An isolated nucleic acid fragment no more than 120 nucleotides in length and [having] comprising the nucleotides sequence shown in SEQ ID NO: 1 [in Sequence Listing] or an isolated nucleic acid fragment, [(]excluding the nucleic acid having the nucleotide sequence shown in SEQ ID NO: 3 [in Sequence Listing)], comprising the same nucleotide sequence [as] shown in SEQ ID NO: 1 except that one or a plurality of nucleotides are substituted or deleted, or except that one or a plurality of nucleotides are inserted or added, which has an activity to promote expression of a structural gene located downstream of said nucleic acid fragment.

2. (Amended) The nucleic acid fragment according to claim 1, which hybridizes with the nucleic acid [having] comprising the nucleotide sequence shown in SEQ ID NO: 1 [in Sequence Listing] under stringent conditions.

4. (Amended) The nucleic acid fragment according to claim 1, which [has] comprises the nucleotide sequence shown in SEQ ID NO: 1 [in Sequence Listing].

6. (Amended) A recombinant vector comprising at least [a] one nucleic acid fragment of claim 1 [having the nucleotide sequence shown in SEQ ID NO: 1 in Sequence Listing or a nucleic acid fragment (excluding the nucleic acid having the nucleotide sequence shown in SEQ ID NO: 3 in Sequence Listing) having the same nucleotide sequence as shown in SEQ ID NO: 1 except that one or a plurality of nucleotides are substituted or deleted, or except that one or a plurality of nucleotides are inserted or added, which has an activity to promote expression of a structural gene located downstream of said nucleic acid fragment,] and a structural gene located downstream of said nucleic acid fragment[,] whose expression is promoted by said nucleic acid fragment.

7. (Amended) The recombinant vector according to claim 6, wherein said nucleic acid fragment hybridizes with the nucleic acid [having] having the nucleotide sequence shown in SEQ ID NO: 1 [in Sequence Listing] under stringent conditions.

9. (Amended) The recombinant vector according to claim [8] 6, wherein said nucleic acid fragment [has] comprises the nucleotide sequence shown in SEQ ID NO: 1 [in Sequence Listing].

10. (Amended) The recombinant vector according to any one of claims [6 to 9] 6, 7 or 9, wherein said nucleic acid fragment is inserted in an intron sequence located upstream of said structural gene.

11. (Amended) The recombinant vector according to claim 10, wherein said intron sequence [has] comprises the nucleotide sequence shown in SEQ ID NO: 3 [in Sequence Listing].

12. (Amended) The recombinant vector according to claim 10, wherein said intron sequence [has] comprises the nucleotide sequence shown in SEQ ID NO: 2 [in Sequence Listing].

13. (Amended) A method for promoting expression of a structural gene, comprising inserting, at a location upstream of said structural gene, a nucleic acid fragment no more than 120 nucleotides in length comprising [having] the nucleotide sequence shown in SEQ ID NO: 1 [in Sequence Listing] or a nucleic acid

fragment, [(] excluding the nucleic acid having the nucleotide sequence shown in SEQ ID NO: 3 [in Sequence Listing)], [having] comprising the same nucleotide sequence as shown in SEQ ID NO: 1 except that one or a plurality of nucleotides are substituted or deleted, or except that one or a plurality of nucleotides are inserted or added, which has an activity to promote expression of a structural gene located downstream of said nucleic acid fragment.

14. (Amended) The method according to claim 13, wherein said nucleic acid fragment hybridizes with the nucleic acid [having] comprising the nucleotide sequence shown in SEQ ID NO: 1 [in Sequence Listing] under stringent conditions.

16. (Amended) The method according to claim [15] 13, wherein said nucleic acid fragment [has] comprises the nucleotide sequence shown in SEQ ID NO: 1 [in Sequence Listing].

17. (Amended) The method according to any one of claims [13 to 16] 13, 14 or 16, wherein said nucleic acid fragment is inserted in an intron sequence located upstream of said structural gene.

18. (Amended) The method according to claim 17, wherein said intron sequence [has] comprises the nucleotide sequence shown in SEQ ID NO: 3 [in Sequence Listing].

Claims 21-32 have been added.